

Procedure for Submission of Employee Certification
(§40.1-57.2 (C), VA Code Ann.)

Virginia Code § 40.1-57.2 authorizes the Board of County Supervisors (“Board”) to adopt an ordinance to provide for collective bargaining (“ordinance”). To date, the Board has not adopted an ordinance, and the Virginia Code does not require the Board to adopt an ordinance. As long as the Board has not adopted an ordinance, employees (who deems themselves part of an “appropriate unit”) may submit an employee certification as described in this procedure which will trigger a 120 day time period within which the Board will be required to vote to adopt or not adopt an ordinance providing for collective bargaining. Any determination by the Board not to adopt an ordinance does not preclude the Board from adopting an ordinance at any time in the future, nor does it preclude other employees from submitting additional employee certifications pursuant to this process.

A. Definitions

As used in this procedure:

"Appropriate Unit" means a group of employees who, by self-determination, is deemed a group of employees similarly situated in such ways as to make it reasonable for a single representative to represent or negotiate on their behalf, taking into consideration a commonality of interests across the group as demonstrated by similarity of work and work duties, training and qualifications, hours of work, and working conditions, as well as other relevant factors such as the desires of the employees and administrative structure of the County, and the County departments, offices, and agencies to be affected.

"Board" means the Board of County Supervisors of Prince William County, Virginia.

"Employee Certification" means a petition or other document similar to the form attached to this procedure (“petition”), submitted pursuant to this procedure to trigger a vote by the Board on whether or not to adopt an ordinance providing for collective bargaining. The petition must be signed by a number of County employees constituting a majority of the total number of the described group of County employees deemed by them to constitute an appropriate unit for collective bargaining under this procedure. The petition shall include the individual employees' printed names, current County position/job classification, hire date, signature, and signature date. Each signature date and the date of the petition shall be within the 60 days preceding the date of filing of the employee certification.

The petition shall be submitted on behalf of the unit by one or more current County employees who represent, by notarized signature(s), that he/she is a member of the unit described and that the content of the petition is true and correct to the best of the employee's knowledge and belief. If at any time during the 120 day period it is determined by the County that majority support does not or no longer exists, the employee certification may be determined insufficient.

"Clerk" means the Clerk to the Board or their designee.

"*Collective bargaining*" means the legally assumed mutual obligation of an employer, by its management representatives, and the exclusive bargaining representative or agent of employees in an appropriate unit to meet and negotiate in good faith regarding terms and conditions of employment, with one option including the good faith intention to reach a legally binding and enforceable agreement (i.e., a collective bargaining contract).

"*Confidential employee*" means any employee who works in or directly for:

- (1) the office of the Board;
- (2) the office of the County Executive;
- (3) the office of the County Attorney;
- (4) the Office of Human Resources or other department, office, agency or position in which an employee has authorized access to confidential County personnel files;
- (5) the Office of Management and Budget; or
- (6) holds any administrative or clerical position in direct support of managerial employees or any position, wherever assigned and however titles may be changed from time-to-time, with authorized access to confidential information pertaining to County budgetary, fiscal, and other information and data materially relevant to collective bargaining.

"*County employee*" means any employee in the competitive service of the County, as defined in Prince William County Code Chapter 19, except it does *not* include anyone who is:

- (1) a confidential employee, as defined herein;
- (2) a managerial employee, as defined herein;
- (3) a supervisor, as defined herein; and
- (4) an employee in new employee probationary status pursuant to the County's Personnel Policy.

"*County Executive*" means the County Executive of Prince William County or their designee.

"*Current Employee*" means one who is employed by the County at the time of signing an employee certification, as defined herein, through the time of the employee certification's submission to initiate of this procedure.

"*Managerial employee*" means any County employee who:

- (1) has responsibility for a County division, department, office, or agency, or a unit or sub-unit of a County division, department, office or agency;

- (2) participates in the formulation of management policy;
- (3) is significantly engaged in executive or management function or charged with the responsibility of directing the implementation of management policies, procedures, or practices; or
- (4) is materially involved as a decision maker in personnel decisions, including, but not limited to, staffing, reductions-in-force/layoffs, reorganizations, hiring, discipline, evaluations, pay, assignments, transfers, promotions, or demotions.

"Supervisor" means any County employee who customarily and regularly devotes a majority of work time to supervision of two or more County employees and has authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, assign, evaluate, reward, or discipline other County employees, or adjust grievances, or effectively to recommend any such actions. With respect to the Fire Department, "supervisor" includes all personnel at the rank of Battalion Chief or above. With respect to the Police Department, "supervisor" includes all personnel at the rank of Captain or above.

B. Procedure

(1) Filing of Employee Certification:

Effective May 1, 2021, County employees, acting individually or as a group may at any time file with the Clerk an employee certification, as defined in this procedure, that a majority of County employees constituting an appropriate unit, as defined herein, seek a vote by the Board on an ordinance permitting collective bargaining for that unit. Any such employee certification shall be filed by certified mail – return receipt requested, hand delivery with signature of receipt required, or other means by which date of actual receipt may be confirmed and documented by signature of the Clerk. The Clerk shall provide to the filing individual or group representative written confirmation of the date of receipt with simultaneous notice to the Board, County Executive, and County Attorney. The 120 days prescribed by Virginia Code § 40.1-57.2(C) within which Board action is required in response to presentation of the employee certification ("the 120-day Period") shall run from the date of receipt by the Clerk.

(2) Determination of Sufficiency of Employee Certification:

- (a) The County Executive shall within no more than 30 days from date of notice from the Clerk of the receipt of an employee certification submitted under this procedure and applicable law, take reasonable steps to verify whether the employee certification complies in all material respects to the requirements set forth in this procedure for employee certification, and shall provide to the Clerk, the filing party and the Board, a statement of the findings of the verification process no later than the end of that 30-day period. Verification efforts shall extend only to verification that (1) any party purporting to file an employee certification on behalf of the employee group (unit) has provided notice to the employee group and files the employee certification with their consent; (2) that the signatures are only those of current County employees who

are within the described group (unit) of employees; and (3) that the employee group (unit) described in the employee certification petition constitutes an appropriate unit under this procedure.

- (b) Administratively acceptable evidence for verification of support of an employee certification petition for the purposes described here may include, but are not limited to, authorizations that satisfy the Uniform Electronic Transactions Act (§ 59.1-479 *et seq.*, VA Code Ann.) such as electronic signatures.
- (c) If the employee certification is deemed sufficient, the County Executive's statement of findings shall so provide, and the 120-day Period shall continue to run.
- (d) In the event the employee certification is found insufficient, i.e., fails to conform to the substantive definition of employee certification set forth in this procedure in any material respect that indicates less than majority support for Board action within the unit described, the statement shall so indicate and state the reasons with particularity.

(3) Effect of Insufficient Employee Certification:

- (a) A determination of insufficiency of the employee certification filed shall toll the 120-day Period for action initiated by the particular employee certification petition, and the filing party shall have 15 days from the date of issuance of the statement of findings in which to submit a written response and/or objections to the statement to the Clerk and the County Executive. The filing party shall state the basis for any objections made to the findings with particularity and shall include any additional information or documents supporting the objection(s). The County Executive shall within 15 days of the filer's response to the statement of findings, if any, issue a re-determination of sufficiency or insufficiency of the employee certification. If deemed sufficient, the 120-day Period for Board action on collective bargaining for the unit shall resume from the date the re-determination is issued.
- (b) If the employee certification is again determined to be insufficient in any respect that shows less than majority support, the Board shall have no obligation, by operation of law, to vote on a collective bargaining ordinance based on the particular employee certification filed for the described group. The filing party or another party may file a new employee certification at any time thereafter, and this procedure shall apply as adopted with reference to a new 120-day Period.
- (c) Failure of the filing party to timely respond to a finding of insufficiency meeting the requirements set forth in this procedure shall conclude this process and the 120-day Period arising from that filing shall end. The filing party or another eligible party may file a new employee certification at any time thereafter on behalf of the same or similar described group of County employees. The requirements of this procedure shall apply in the same manner, except that no employee certification identical in all material respects to one filed in the preceding 60 days and determined during that

time to be insufficient shall be considered to trigger a new 120-day Period under applicable Virginia law and this procedure, and the filing party shall be so notified.

C. Vote by the Board

At any time following the County Executive's determination of sufficiency of an employee certification, the Board may vote to adopt or not adopt an ordinance providing for collective bargaining, subject to the requirements of the Virginia Code, but in any event, the Board must vote to adopt or not adopt an ordinance within 120 days of the filing of the employee certification in accordance with this procedure.